

# Exhibit 2

**In the Matter Of:**

*NYCTA vs*

*Express Scripts*

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*SUSAN HAYES*

*February 19, 2021*

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ORAL AND VIDEOTAPED DEPOSITION  
OF  
SUSAN HAYES  
FEBRUARY 19, 2021

1 did.

2 If I did, it wasn't -- it doesn't  
3 stick in my head.

4 Q. And I'll tell you, Ms. Hayes, it's  
5 not identified on Exhibit A.

6 Does that tell you that you didn't  
7 look at his deposition?

8 A. Yeah. I -- yeah. I don't recall  
9 it.

10 Q. So I feel like we were talking over  
11 each other a little bit.

12 If it's not listed on Exhibit A, is  
13 it a fair statement that you did not review  
14 the deposition of Jim Masella?

15 A. Correct.

16 Q. And I noticed on Exhibit A that  
17 there's not a deposition of anybody from  
18 NYCTA.

19 Is it fair -- that you didn't  
20 review any of the depositions of the NYCTA  
21 witnesses?

22 A. It is fair to say that, yes.

23 MS. HELLMANN: Beth, let's go ahead  
24 and mark Exhibit 116, please.

25 (Exhibit No. 116 Marked.)

1 client, is that set forth in the contract  
2 between you and your client?

3 A. Yes, ma'am.

4 Q. And tell me the algorithms.

5 What -- what are some of the things  
6 that you're looking for in -- in running this  
7 data?

8 A. Well, we have very sophisticated  
9 algorithms. I'm a criminologist, so we use  
10 criminological theory as a basis of our  
11 algorithms.

12 And one of those theories, the  
13 differential association theory, says that,  
14 basically, white collar crime is learned from  
15 other white collar criminals.

16 And so we look at the density of  
17 the relationship between the prescriber, the  
18 pharmacy, and then sometimes the patient.

19 So we look at that relationship.  
20 That is heavily weighted.

21 So we score both pharmacies and  
22 claims, and that's heavily weighted on the  
23 pharmacy side.

24 And then we're also looking at  
25 attributes within in the claim that are

1 standard deviation from the mean.

2 And so basically we have, for lack  
3 of a better word, a means table for every NDC  
4 and every DPI that runs through our system.

5 And so the computer scores it for a  
6 standard deviation from that mean.

7 So, you know, let's just take age,  
8 for example. You wouldn't see a  
9 seven-year-old getting Botox or cholesterol  
10 control medication.

11 And so we're looking at the  
12 standard deviation from the mean on certain  
13 attributes of the claim.

14 So between the pharmacy and the  
15 claim, an aggregate score is produced. And  
16 then, as I said, we take the top-scored claims  
17 and then audit those.

18 Q. Okay.

19 A. So it's targeted from the viewpoint  
20 of potential fraud, waste or abuse and it's  
21 not targeted to any given pharmacy.

22 Q. Okay.

23 And that's helpful.

24 So you're taking one client's data  
25 and you're looking at all of these different

1 factors for that -- for all of that client's  
2 data; is that correct?

3 A. Yes, ma'am.

4 Q. The contract that you have with  
5 your client, does that dictate how you're  
6 going to perform this process?

7 A. Yes. There is a statement of work  
8 I have in our contracts that dictates exactly  
9 that.

10 Yes. It doesn't -- I don't think  
11 it gets down to the statistical weighting of  
12 each one of those but, in general, it's just  
13 what I've explained.

14 Q. Okay. Thank you.

15 This might seem like a basic  
16 question, but I'm going to ask it.

17 In performing these services for  
18 your clients, do they pay you a fee?

19 A. Yes. Yes, they do.

20 Q. The -- the system that you have  
21 that you run the claims through, did you use  
22 that at all in coming up with your opinions in  
23 this case?

24 A. No, because I did not receive  
25 claims data, detailed claims data.

1 Q. Okay.

2 A. The whole -- you know, over a long  
3 period of time, no.

4 Q. I'm sorry. Say that again.  
5 What long period?

6 A. No, I did not -- I did not run them  
7 through our system. No, I did not.

8 I used some of the same principles  
9 in analyzing some of the information that I  
10 saw, but I did not run them through our  
11 system, no.

12 Q. And you indicated that you didn't  
13 have detailed claims data.

14 At some point did you get detailed  
15 claims data for the NYCTA plan?

16 A. Yes. I did get detailed claims  
17 data, yes.

18 Q. And at that point did you run any  
19 of it through your system -- your -- the  
20 claims analysis system that you have?

21 A. No, I did not.

22 Q. Is there any reason why you didn't?

23 A. No, there's no reason why I didn't,  
24 other than -- other than our system is  
25 extremely complicated and there's a lot of



1 rules around the data that would preclude me  
2 from doing this on a one-off basis.

3 Q. Understood.

4 So --

5 A. We take -- we take at least  
6 90 days, if not, at times, 6 months, to  
7 implement a client. It's not a project we  
8 take lightly when we have a new client come on  
9 board.

10 So it's not like we can just jam it  
11 into the system and hope it works correctly.  
12 We do a lot of testing. So it's not something  
13 that you do on a one-off basis.

14 Q. Understood.

15 In terms of your business, Pharmacy  
16 Investigators & Consultants, who are -- for  
17 lack of a better term, who are your  
18 competitors in the marketplace?

19 A. Well, on the benefits consulting  
20 side we have many competitors, you know,  
21 starting at, you know, the -- the top  
22 consulting firms, you know, in America, you  
23 know, Mercer, Aon, Towers, Watson.

24 So starting at that level, all the  
25 way down to small -- you know, would I

1 (Pause.)

2 Were you able to open that?

3 A. Yeah, I'm opening it. I'm just  
4 trying to move it now.

5 Yes, I have it.

6 Q. I've handed you what's been marked  
7 as ESI Exhibit 117.

8 And, for the record, it's Bates  
9 labeled Express Scripts 1095-351.

10 And this was a document, according  
11 to your report, that you reviewed and you  
12 actually reference on Page 16 of your report.

13 Do you remember this document?

14 A. Yes, ma'am. I do.

15 Q. And what is your understanding as  
16 to the types of fraud, waste and abuse  
17 services Express Scripts offers its clients?

18 A. My understanding is that they  
19 offer, if you will, kind of a basic Fraud,  
20 Waste and Abuse Program, and then they offer  
21 an Enhanced Fraud, Waste and Abuse Program.

22 Q. And is that consistent among other  
23 PBMs in the industry?

24 A. I'm not sure. That was not in the  
25 scope of what I was asked to do in this case.

1 I have not looked at every PBM's Fraud,  
2 Waste & Abuse Program.

3 Q. And I think you refer to the base  
4 Fraud, Waste & Abuse Program.

5 Is that what's referred to under  
6 the "Pharmacy Fraud Monitoring and  
7 Investigations" on Exhibit 117?

8 A. Hold on.

9 Where -- where is 117?

10 Q. It's Exhibit 117. It's what we --

11 A. Tab 15?

12 Q. Yes.

13 A. Tab 15. Okay.

14 All right.

15 And where did you say that was?

16 Q. Sure.

17 Do you see where it says, "Base  
18 Fraud Monitoring & Fraud Tip Hotline"?

19 A. I -- I do see that, yeah.

20 Q. Okay.

21 And then if you go down a section,  
22 do you see where it says, "Pharmacy Fraud  
23 Monitoring and Investigations"?

24 A. Yes. I do.

25 Q. Okay.

1 THE REPORTER: I didn't hear you.

2 MS. HELLMANN: Thank you.

3 Q. (BY MS. HELLMANN) So as part of  
4 their investigations of pharmacies, Express  
5 Scripts will reach out to prescribers and  
6 members, correct?

7 A. Correct.

8 I mean, that's what it says right  
9 here, right?

10 Q. Correct.

11 A. Yes.

12 Q. And -- and tell me what you  
13 understand the Enhanced Fraud, Waste & Abuse  
14 Program to be.

15 A. I believe that's a program that is  
16 more targeted to -- excuse me -- the specific  
17 utilization of a given client. So a client  
18 can buy up that service. So it's the  
19 utilization of that specific client.

20 Q. The Enhanced Fraud, Waste & Abuse  
21 service that Express Scripts offers, looking  
22 at physicians and members?

23 A. Well, I think in the same way the  
24 base program looks at prescribers and members.

25 Q. Is it your understanding that the

1 So...

2 Q. And this document goes on to  
3 describe that, as part of this program,  
4 certain reports are proactively generated,  
5 correct?

6 A. Yes. That's what it says here.  
7 Sample reports are proactively generated. It  
8 says exactly that.

9 Q. You understand -- I think you  
10 actually testified that there was an  
11 additional fee if clients wanted to be  
12 enrolled in the Enhanced Fraud, Waste & Abuse  
13 Program, correct?

14 A. Yes.

15 Q. What's your understanding as to  
16 whether New York City Transit was enrolled in  
17 the Enhanced Fraud, Waste & Abuse Program?

18 A. They not were enrolled in that.

19 Q. Do you know why Transit did not  
20 enroll in the Enhanced Fraud, Waste & Abuse  
21 Program?

22 A. I do not, other than I think they  
23 had union -- concerns with the union about  
24 enrolling in such a program.

25 Q. And what's the basis that they had

1 concerns with the union for enrolling in the  
2 program?

3 A. I didn't -- I just made that as an  
4 assumption of what was told to me by  
5 Mr. Shifrin.

6 Q. I know earlier you testified that  
7 you didn't read the deposition of Jim Masella.

8 Do you know who Mr. Masella was for  
9 New York City Transit?

10 A. I think he was in charge of their  
11 benefits programs.

12 Q. And in coming up with the opinions  
13 that you've opined upon and that are contained  
14 in your supplemental report, would  
15 Mr. Masella's testimony have been relevant to  
16 you?

17 MR. SHIFRIN: Objection.

18 THE WITNESS: I formed my opinion  
19 without -- I felt that I formed my  
20 opinion looking at the documents that I  
21 looked at and did not need to consider  
22 his opinion -- or his testimony. I'm  
23 sorry.

24 Q. (BY MS. HELLMANN) If Mr. Masella  
25 testified that the reason New York City

1 Q. So can you tell me specifically  
2 what Express Scripts did or did not do that  
3 you believe was inconsistent with industry  
4 standards?

5 A. Yes.

6 Q. Okay.

7 And if it's a list, I might stop  
8 you, but why don't you just go ahead and tell  
9 me.

10 A. Well, as my opinion states, I  
11 believe ESI should have very quickly ended the  
12 relationship with New York City Transit  
13 Authority, warned them -- warned them, brought  
14 it to their attention -- whatever words you  
15 want to use -- that there was a spike in  
16 compound utilization, and that this was  
17 outside their geographic area -- the pharmacy  
18 was outside the geographic area.

19 Q. And -- and when you say "the  
20 pharmacy," are you referring to Fusion  
21 Pharmacy?

22 A. I am.

23 Q. Is there anything else that you  
24 believe Express Scripts did or did not do that  
25 you believe was inconsistent with the industry

1 standard?

2 A. In "Opinion One" or in other  
3 opinions?

4 Q. In other -- we can go through each  
5 one of them. I'm looking for all of your  
6 opinions.

7 What did Express Scripts do or did  
8 not do that you believe was inconsistent with  
9 what other reasonable and prudent PBMs would  
10 do in the industry standard?

11 A. Well, first of all, they should  
12 have let New York City Transit Authority know  
13 that there was a spike in compound  
14 utilization.

15 There was not necessarily a fraud,  
16 waste and abuse failure at that point, but it  
17 was certainly an account management failure at  
18 that point.

19 So early on in the relationship,  
20 they should have said, "Hey, there's a lot of  
21 compounds going on here."

22 These are -- this is most unusual.  
23 As I point out, compounds are generally about  
24 one percent of the utilization. This was, you  
25 know, much more than one percent of the



1 utilization.

2 And that they should have let New  
3 York City know what to do and consulted with  
4 them about what to do.

5 So let them know this is what's  
6 going on and then, you know, consult with them  
7 about what to do about it.

8 And then further, if you want to,  
9 you know, go into Opinion Two briefly, once  
10 that was known and done, then, you know, ESI  
11 should have done a better job of monitoring  
12 Fusion and really investigating Fusion.

13 And so that was a fraud, waste and  
14 abuse failure.

15 And then my Opinion Three is  
16 basically that they didn't do this because  
17 there was a financial incentive not to do  
18 that.

19 So, in essence, that's my report.

20 Q. Okay.

21 So I want to break --  
22 (communications breakup/inaudible) -- down a  
23 little bit.

24 A. You want to what a little bit? You  
25 broke up.

1 With respect to bringing to New  
2 York City Transit's attention that the  
3 compound spike -- I think is how you referred  
4 to it -- what is the industry standard for  
5 this action, or inaction?

6 A. Well, as I mentioned in my report,  
7 typically what happens, you know, with PBMs  
8 and their clients is that they meet on a  
9 periodic basis, whether that be monthly,  
10 quarterly -- usually no -- no less frequent  
11 than quarterly -- but they would meet and  
12 discuss top drugs -- top drugs and top drug  
13 categories that are causing the top cost for  
14 members, and they would discuss ways to  
15 mitigate those costs.

16 That is really the whole point of  
17 quarterly meetings between PBMs and their  
18 clients, is to talk about what's going on with  
19 a plan, either what's going on with drug  
20 utilization, what's going on with members,  
21 what's going on with prescribers and  
22 pharmacies, and what PBMs can do to better  
23 manage costs on behalf of that given client,  
24 given that particular client's needs and, you  
25 know, what they have available to them.

1 Q. So tell me, with respect to  
2 bringing it to their attention with respect to  
3 these meetings, what did the industry standard  
4 require that Express Scripts do?

5 A. I'm debating the word "require." I  
6 don't think that there's a, you know, etched  
7 in stone, a manual that requires PBMs to do  
8 certain things at these account management  
9 meetings.

10 But there's certainly an industry  
11 expectation that what's discussed at these  
12 quarterly meetings are the utilization and  
13 what can be done to prevent unusual or  
14 excessive utilization of -- of a prescription  
15 drug program.

16 I mean, that's really the "M" in  
17 management, the PBM, the management. They're  
18 supposed to be managing those prescription  
19 drug costs. Hence they're called, PBMs,  
20 Prescription Benefit Managers.

21 So PBMs are -- their role is to  
22 manage the costs of a prescription drug  
23 program and advise clients on how to better  
24 manage the prescription drug program.

25 Q. And with respect to --

1 (communications breakup/inaudible) --  
2 quarterly meetings, I think you said, or  
3 monthly meetings, that talk about -- that talk  
4 about drug utilization, prescribers,  
5 et cetera, is it your opinion that such  
6 meetings are required -- that the industry  
7 standard requires such meetings?

8 A. Yes. I would say that industry  
9 standards require such meetings.

10 Q. And tell me --

11 (Simultaneous speaking.)

12 A. As I said -- as I said, there's  
13 nothing -- you can't go to some, you know,  
14 document that says -- or legislation that  
15 requires -- you know, there's no legal  
16 requirements.

17 But certainly there's an  
18 understanding in the industry that your PBM  
19 will meet with you periodically -- and  
20 certainly quarterly is a reasonable  
21 expectation -- and that they will discuss with  
22 you what the utilization of the plan is and  
23 ways to better manage that utilization.

24 Yes, that's what the industry  
25 standards would require.

1 Q. And I think you already said  
2 there's no articles that -- that indicate that  
3 this is the industry standard; is that  
4 correct?

5 A. There might be. I have not done  
6 research on that.

7 Q. You're not aware of any articles  
8 that require these meetings that you talked  
9 about or that indicate that these meetings are  
10 an industry standard?

11 A. I don't have -- I have not done  
12 research on that.

13 There probably are articles about  
14 managing Prescription Drug Programs and these  
15 quarterly meetings. Because I could tell you  
16 every client I've had in 25 years, we've had  
17 quarterly meetings with the PBM involved.

18 Q. Are there any studies that you know  
19 about that looked at how often PBMs meet with  
20 their clients?

21 A. I would have to do additional  
22 research on that. No, I have not done that.

23 It's just so predominant in the  
24 industry, I don't think anyone needs to  
25 prescribe it. No pun intended.

1 the compound spend.

2 Is that your opinion?

3 A. Yes.

4 Q. And -- and what's your basis of the  
5 industry standard required Express Scripts to  
6 come up with a reasonable solution to the  
7 compound spend?

8 MR. SHIFRIN: Object to form.

9 THE WITNESS: I think my -- my  
10 statement was that whatever problem  
11 there was with a client -- if there are  
12 problems, increased spend in a certain  
13 category -- that the PBM and the client  
14 typically discuss those and -- and come  
15 up with remedies or solution that is  
16 would mitigate, if possible, those  
17 situations.

18 For example, let's just say it's  
19 another client that had maybe a high  
20 diabetic spend. They might talk about a  
21 wellness program or, you know, campaign  
22 on dieting and, you know, healthy  
23 living, type thing.

24 So I've sat in many a meeting where  
25 we've discussed top spend categories

1           like diabetes and rheumatoid arthritis  
2           and other various top spend categories.

3           Q.     (BY MS. HELLMANN) Have you ever  
4 sat in a meeting between a PBM and a client  
5 regarding high compound spend?

6           A.     Yes.

7           Q.     What were -- what were some of the  
8 solutions that were discussed?

9           A.     Either blocking compounds at some  
10 level, some dollar level, or prior-authorizing  
11 those, or eliminating the pharmacy from the  
12 network.

13          Q.     Did Express Scripts talk to New  
14 York City Transit about blocking compounds at  
15 some level?

16          A.     I -- I believe they did. But  
17 because of union issues, which is what I  
18 confused before, they weren't allowed to block  
19 drugs at a certain level.

20          Q.     Did Express Scripts talk to New  
21 York City Transit about prior authorizations  
22 for compounds?

23          A.     I --

24                   (Simultaneous speaking.)

25           MR. SHIFRIN: Objection.

1 THE WITNESS: -- (inaudible) --

2 Go ahead, Max. I'm sorry.

3 Are you done?

4 MR. SHIFRIN: Go ahead.

5 Object to form.

6 Sorry. Go ahead.

7 THE WITNESS: I -- I don't recall.

8 I do -- I do believe that there was some  
9 discussion regarding prior  
10 authorizations, yes.

11 Q. (BY MS. HELLMANN) Did Express  
12 Scripts talk to New York City Transit about  
13 blocking pharmacies or eliminating pharmacies  
14 from New York City Transit's network?

15 A. I did not see any evidence of that.

16 Q. You didn't see any evidence in all  
17 the documents you reviewed about Express  
18 Scripts talking to New York City Transit about  
19 blocking or eliminating pharmacies?

20 Is that your testimony?

21 MR. SHIFRIN: Sarah, can you  
22 clarify the scope of the question?

23 Because I think there might be some  
24 confusion there.

25 But go ahead.



1 Q. Well, I guess that's my question.

2 Do you believe that there's  
3 something else that Express Scripts failed to  
4 mention or a recommendation Express Scripts  
5 failed to make to assist New York City Transit  
6 with its compound spend?

7 A. I believe what they offered was  
8 their compound program, and New York Transit  
9 Authority could not do that because of their  
10 union bargaining -- union bargaining  
11 agreements.

12 Q. And so my question is: Do you have  
13 an opinion as to whether Express Scripts  
14 should have come up with a different solution  
15 or offered something else to New York City  
16 Transit?

17 A. Yes.

18 Q. And what should Express Scripts  
19 have done?

20 A. They should have eliminated Fusion  
21 from the network.

22 Q. Okay.

23 So this is -- your opinion is that  
24 they should they have eliminated Fusion from  
25 the network.

1 Any other steps that Express  
2 Scripts should have taken or recommendations  
3 that it should have made with respect to New  
4 York City Transit's compound spend?

5 A. Well, when -- or -- when?

6 Early on in the relationship when  
7 they first saw it, or later on in the  
8 relationship?

9 Or when -- when are you --

10 Q. At any point.

11 A. Well, as I've testified, they  
12 should have brought it to their attention.  
13 They should they have discussed it and they  
14 should have come up with a strategy to  
15 eliminate this level of compound spending.

16 Q. And what is the strategy Express  
17 Scripts should have come up with?

18 Do you have --

19 (Simultaneous speaking.)

20 A. Elimi- --

21 Q. Do you have an opinion?

22 A. Yes.

23 Eliminating Fusion from the -- from  
24 the network. Yes.

25 Q. Any other strategies that

1 Express Scripts should have come up with or  
2 recommended?

3 A. No. I think that would have taken  
4 care of the problem here.

5 Q. When should Express Scripts have  
6 brought Fusion to New York City Transit's  
7 attention?

8 A. Very early on in the relationship;  
9 April, May, June of 2016.

10 Q. Do you have an opinion as to  
11 whether Express Scripts raised New York City  
12 Transit's compound utilization timely with New  
13 York City Transit?

14 A. I do not think it was timely.

15 Q. You mentioned that --

16 MS. HELLMANN: Well, let me strike  
17 that.

18 Q. (BY MS. HELLMANN) When was the  
19 contract effective between Express Scripts and  
20 New York City Transit?

21 A. April 2016, I believe. I can -- I  
22 can -- should probably consult, but I think  
23 that's -- that's my recollection.

24 Q. And it's your testimony that  
25 Express Scripts should have raised Fusion with

1 Is that --

2 A. Yes, right.

3 Q. Who at Aon prepared them?

4 A. Oh, gosh.

5 I can't remember her name. I would  
6 have to look.

7 Q. Did you talk with anyone at Aon  
8 about these charts?

9 A. No.

10 Q. Did you review any Aon testimony  
11 regarding these charts?

12 A. No.

13 Q. When did Aon prepare the charts?

14 A. I would have to look back. I -- I  
15 have to look back and see -- see -- look  
16 exactly back to the original documents.

17 Q. Do you know what year it was?

18 A. Yeah. It was -- it was not early  
19 on in the relationship. It was later in the  
20 relationship.

21 Q. Okay.

22 Do you know --

23 (Simultaneous speaking.)

24 A. I would --

25 Q. -- what year?

1 can read here, is that they prepared it to  
2 discuss with NYTA (sic) a compound drug  
3 analysis.

4 Q. Do you know if anyone requested  
5 that Aon prepare these charts?

6 A. I believe Aon and NYCTA discussed  
7 this, and these were prepared and presented.

8 Q. And, again, you don't know why that  
9 they were prepared and presented, though,  
10 correct?

11 A. No.

12 But I can assume it's because,  
13 obviously, the ESI reports were showing  
14 excessive compound utilization and this was a  
15 drill-down as to what was going on.

16 Q. Did you review any of the Optum  
17 data in connection with preparing your report?

18 A. No.

19 Q. How did Aon have the data to  
20 prepare these charts?

21 A. I would assume ESI gave it to them.

22 Q. Do you know how often Aon received  
23 the data from Express Scripts?

24 A. No.

25 Q. Did you review the contract between

1 Aon and NYCTA?

2 A. No.

3 Q. Do you have any understanding as to  
4 what obligations Aon had with respect to  
5 advising NYCTA?

6 A. No.

7 Q. I understand you didn't review any  
8 of the Optum data that is supposedly reflected  
9 in these charts.

10 Did you review any of the  
11 underlying Express Scripts data that is  
12 reflected in these charts?

13 A. No.

14 Q. Did you do any type of testing to  
15 determine that the numbers in these charts are  
16 accurate?

17 A. No.

18 Q. You stated that the charts were  
19 prepared in February of 2018.

20 I guess -- is it a look-back type  
21 of chart, to look back at over a period of  
22 time?

23 A. Well, that certainly seems like  
24 what it appears to be.

25 Q. I guess, fair, that you don't know

1 done?

2 A. Well, we -- we talked about the  
3 fact that prescribers and pharmacies were  
4 eliminated from the network.

5 Q. Do you know whether Express Scripts  
6 had access to the Optum data in order to  
7 compare the spend under Optum as compared to  
8 Express Scripts?

9 A. I don't know that, but it is  
10 typical that a PBM provides the new PBM claims  
11 data. But I don't know.

12 Q. Did you do any analysis in  
13 preparing your report to see how Transit's  
14 compound data compared to the data of other  
15 Express Scripts' clients?

16 A. No.

17 I did look at data, but I didn't  
18 look at how it compared to other ESI clients,  
19 no.

20 Q. And what's the data you looked at?

21 A. I was provided data in this case,  
22 claims data in this case.

23 Q. You didn't -- you didn't use any of  
24 that claim data to verify the accuracy of any  
25 of the charts that are contained in your

1 report, true?

2 A. True. Not these charts, correct.

3 Q. And -- and you didn't do any  
4 testing or validation of the charts that are  
5 contained in your report, correct?

6 A. No. I assumed that they were  
7 produced under subpoena, they were correct.

8 Q. When you say that they were  
9 produced under subpoena --

10 (Simultaneous speaking.)

11 A. Well --

12 Q. -- what do you mean by that?

13 A. -- they were produced in this case.  
14 I'm sorry.

15 Q. You -- you did nothing more than  
16 copy them from the -- from Aon's presentation,  
17 correct?

18 A. Correct.

19 MR. SHIFRIN: Object to the  
20 question, for the record.

21 Q. (BY MS. HELLMANN) In looking at  
22 the chart on Page 7, this shows the spend  
23 month by month under Optum and the  
24 month-by-month spend under Express Scripts,  
25 correct?



1 A. Yes.

2 Q. Do you have an opinion as to  
3 whether the reason for the increase in spend  
4 is because Express Scripts was the PBM and not  
5 Optum?

6 A. Could you ask that again, please?

7 Q. Do you have an opinion as to  
8 whether the reason for the increase in spend  
9 was because Express Scripts was the PBM and  
10 not Optum?

11 MR. SHIFRIN: Objection to form.

12 THE WITNESS: Yeah, I -- I'm  
13 struggling with that question, only  
14 because that's really the whole -- the  
15 whole point of the case, really.

16 I mean --

17 Q. (BY MS. HELLMANN) Well, let me ask  
18 you this: Is it your opinion that New York  
19 City Transit's compound spend would not have  
20 increased if Optum remained the PBM?

21 A. I have no idea. I did not look at  
22 Optum's programs or network. That was outside  
23 the scope of what I was asked to do.

24 Q. Did you compare the number of plan  
25 members when Optum was the PBM versus the

1 number of plan members when Express Scripts  
2 was the PBM?

3 A. No.

4 Q. Did you compare New York City  
5 Transit's benefit coverage under Optum to see  
6 if there were any differences between the  
7 benefit coverage under Optum and the benefit  
8 coverage under Express Scripts?

9 A. No.

10 Q. Did you review Transit's contract  
11 with Optum to see if there were any  
12 differences between that and the contract with  
13 Express Scripts?

14 A. No.

15 Q. You indicate on Page 6, immediately  
16 before the first chart -- you state, "The  
17 spike was immediate upon ESI's assumption of  
18 PBM responsibilities, as compounds doubled in  
19 the first month of the contract with..." --  
20 Express Scripts.

21 Do you see that?

22 A. Yes.

23 Q. If Express Scripts didn't know what  
24 the spend was under Optum, fair that it  
25 wouldn't have visibility into whether the

1 report.

2 And I'm looking at your Paragraph 5  
3 on the page before it, which refers to this  
4 chart.

5 You say, "As the chart below  
6 demonstrates, the compound spike involved a  
7 disproportionate volume of ten specific  
8 compounds..."

9 Do you see that statement that you  
10 make?

11 A. Yes.

12 Q. And is it your testimony that each  
13 of these PBM drug names are specific  
14 compounds?

15 A. They're ingredients that go into a  
16 compound. I don't think compounds really have  
17 names.

18 Q. In the data that you received --  
19 you did receive some claims data, the raw data  
20 in this case.

21 Could you go to that data and look  
22 to see where these PBM drug names are  
23 identified?

24 A. I would have to go back to the data  
25 and see.

1 Q. Do you know if the PBM drug name is  
2 identified anywhere in that -- in the data  
3 that you've received?

4 A. I would have to go back to the data  
5 and check.

6 Q. If I wanted to go look at data to  
7 verify that these numbers are accurate, where  
8 would I go look?

9 A. In the claims data.

10 Q. And that's the claims data that you  
11 have, correct?

12 A. Yeah.

13 I -- what you're asking me is if  
14 the name of this particular drug was in the  
15 data.

16 And I'm saying, I would to have go  
17 back. There were, I believe, over a hundred  
18 fields of data that -- that we got.

19 So I would have to go back and look  
20 at see if this specific drug name was in the  
21 data.

22 That's what you asked me and that's  
23 what I'm -- I'm saying.

24 Q. Right.

25 A. So forgive me if I didn't memorize

1 all 200 of the data fields and what was in  
2 there or not.

3 Q. My question -- that wasn't my  
4 question.

5 My question is -- I said: If I  
6 wanted to go verify that the numbers in these  
7 charts are accurate, where would I look?

8 And you testified that I would look  
9 in the claims data, correct?

10 A. Yes.

11 Q. And then prior to including these  
12 charts in your report, you didn't verify any  
13 of the numbers, correct?

14 A. No.

15 Q. The compound drug ingredients that  
16 are identified on this chart as PBM drug  
17 names, New York City Transit covered all of  
18 these ingredients as part of its benefit  
19 design, correct?

20 A. They covered compounds.

21 Q. And so, therefore, covered these  
22 ingredients, correct?

23 A. Yes.

24 Q. Do you have an opinion as to  
25 whether the top ten ingredients would have

1 A. Yes.

2 Q. And that you took it from the  
3 presentation and copied it into your report,  
4 correct?

5 A. Yes.

6 Q. The members that are shown under  
7 "Express Scripts," do you know -- or did you  
8 look to see if any of these members were New  
9 York City Transit members prior to April  
10 of 2016?

11 A. No.

12 Q. I guess -- and since you didn't  
13 review and you don't even have the Optum data,  
14 you have no way of knowing, correct?

15 A. Correct.

16 Q. Member No. 1 under Optum, it looks  
17 like he or she had 37 prescriptions.

18 Do you see that?

19 A. Yes.

20 Q. Over what period of time did that  
21 Member 1 get those 37 prescriptions?

22 A. I would have to look back at the  
23 time period.

24 Q. Well, go ahead and look back.

25 A. Well, I guess I would have to bring

up that other document, the one that had the charts in them.

Do you -- do you want me to take a break and go do that?

Q. Yeah. It's in the next tab -- or it's Exhibit 119, if you want to pull it up.

A. Okay. Hold on.

(Witness reviewing exhibit.)

Well, it looks like the Optum time period was from April '15 to March 30th, 2016; and then the ESI timeframe was April '16 through December '17.

Q. They're different time periods, correct?

A. Well, of course. Because it was when Optum was the PBM and when ESI was the PBM, yes.

Q. The Optum data looked in the period of 12 months, correct?

A. Yes.

Q. Express Scripts' data was looking at a period of 20-some months?

A. Yes. Roughly 20 months, yes.

Q. And with respect to Member 1 under Optum, do you know if those 37 prescriptions

1 Scripts received his or her 65 prescriptions  
2 over a period of 20 months, would that have  
3 been relevant to your analysis?

4 A. No.

5 As I say here, none of the  
6 beneficiaries in the top ten for compounds  
7 under ESI were also in the top 10 or 20 for  
8 Optum.

9 All I'm pointing out in here is  
10 that these were different numbers under Optum  
11 as ESI. That -- that was really all the point  
12 of this chart was.

13 Q. And fair, though, you don't know if  
14 any of the members under Optum were still  
15 members when Express Scripts became the PBM.

16 True?

17 A. You're right. I don't know.

18 But it would be really unlikely  
19 that a bunch of members would just drop off  
20 from one month to the next.

21 Q. But you have no way of knowing  
22 that, correct?

23 A. I don't. And --

24 (Simultaneous speaking.)

25 Q. You could have confirmed it by



1 looking at the underlying claims data, but you  
2 didn't, correct?

3 A. I didn't have the -- Optum's claims  
4 data.

5 Q. Did you ask for the -- Optum's  
6 claims data?

7 A. It wasn't relevant to me.

8 Q. And, conversely, the -- the members  
9 under -- the top ten members under Express  
10 Scripts, you have no way of knowing if they  
11 were members when Optum was a PBM, correct?

12 A. Correct.

13 Q. After Aon provided this chart to  
14 New York City Transit in January of 2018, do  
15 you know if Transit investigated any of these  
16 numbers?

17 A. I don't.

18 Q. Do you know if Transit asked any of  
19 their members why they were receiving compound  
20 prescriptions?

21 A. I think -- I think eventually  
22 Express Scripts did, but I don't think Transit  
23 did. But I'm not sure.

24 Q. Do you know if Transit passed on  
25 the information about these ten members to the

1 MTA OIG's office?

2 A. At some point there was a fraud tip  
3 that was passed on, yes.

4 Q. Do you know in January or February  
5 of 2018, if the information on this chart was  
6 passed on to the OIG's office?

7 A. I don't.

8 Q. Do you know if Express Scripts sent  
9 member verification letters to any of the  
10 members that are identified on this chart?

11 A. I don't.

12 Q. I guess it would be impossible for  
13 you to know because you don't know the  
14 identity of these members.

15 Is that correct?

16 A. Correct.

17 Q. The underlying claims data would  
18 have it, though, correct?

19 A. Yes.

20 Q. Would it surprise you to know that  
21 Express Scripts did send letters to some of  
22 the individuals on this chart, asking them to  
23 verify that they received the prescriptions?

24 A. I -- I do recall that ESI did send  
25 letters out to members. I don't know if they

1 are the members on this chart because I did  
2 not memorize the numbers of the -- of the  
3 members.

4 Q. And you don't know the names of the  
5 members, correct?

6 A. I don't know the names of the  
7 members, either.

8 Q. Because you didn't review the  
9 underlying claims data that made up this  
10 chart, correct?

11 A. Correct.

12 MR. SHIFRIN: Sarah, asked and  
13 answered several times now. I've given  
14 you some latitude, but I think you can  
15 move on.

16 MS. HELLMANN: We're going to do  
17 this for each chart, Max.

18 Q. (BY MS. HELLMANN) Sitting --  
19 (Simultaneous speaking.)

20 MR. SHIFRIN: How many --

21 Q. (BY MS. HELLMANN) -- here today --

22 MR. SHIFRIN: -- times for each  
23 chart?

24 Q. (BY MS. HELLMANN) Sitting here  
25 today, Ms. Hayes, are you able to testify that

1 chart -- show me what's shown -- what's  
2 depicted in the chart on Page 10.

3 A. These are pharmacies, and what was  
4 dispensed in each of these pharmacies.

5 Q. And what period of time is this?

6 A. Since it's from the same Aon  
7 presentation that we've been discussing, I  
8 assume it's the same period of time.

9 Q. Which is what?

10 A. Well, let's go back and read it.  
11 Optum was April 2015 to March 30th,  
12 2016; and ESI was April 2016 to December 2017.

13 Q. Now, here, Fusion Specialty  
14 Pharmacy is identified as the Number One  
15 pharmacy under Express Scripts, correct?

16 A. Yes.

17 Q. And earlier you stated that you  
18 believe that Express Scripts acted  
19 inconsistent with the industry standard and  
20 what a reasonable and prudent PBM would do  
21 with respect to notifying New York City  
22 Transit about Fusion, correct?

23 A. Yes.

24 Q. And I believe your testimony was  
25 that Express Scripts should have notified New

1 York City Transit in April, May or June  
2 of 2016, correct?

3 A. Yes.

4 Q. How much did Fusion Specialty --  
5 what was the volume of prescriptions dispensed  
6 by Fusion Specialty Pharmacy in April of 2016?

7 A. I would have to go back and look.  
8 I don't know.

9 Q. Where would you go look?

10 A. I would go look in the claims data.

11 Q. You haven't looked yet, correct?

12 A. No. Because that wasn't what I was  
13 asked to do.

14 Q. How much did Fusion Specialty  
15 Pharmacy dispense in May of 2016?

16 A. I -- I don't know.

17 I do know that there was a spike in  
18 utilization and I do know that Fusion  
19 contributed to that spike.

20 Q. How much did Fusion contribute to  
21 the spike in utilization in April of 2016?

22 A. I don't know.

23 Q. How much did Fusion contribute to  
24 the spike in May of 2016?

25 A. I don't know.

1 And that's really not the point, in  
2 my mind.

3 Q. What is your --

4 (Simultaneous speaking.)

5 A. -- (inaudible) --

6 Q. -- basis -- (communications  
7 breakup/inaudible) -- that Express Scripts  
8 should have brought Fusion Pharmacy to New  
9 York City Transit's attention in April, May or  
10 June of 2016, when you don't know how much  
11 Fusion Pharmacy dispensed in any of those  
12 months?

13 A. My opinion -- and my Opinion Number  
14 One is that early on in the relationship there  
15 was a spike in utilization of compounds.

16 That was reported in a report from  
17 ESI to New York.

18 But there should have been a  
19 further breakdown in exactly the questions  
20 you're asking:

21 What was the nature of these  
22 compounds?

23 Who were the pharmacies?

24 Who were the prescribers?

25 Who were the patients?

1                   Were these drugs medically  
2                   necessary?

3                   The questions you're asking should  
4                   have been asked by ESI early on in the  
5                   relationship so that they could have empowered  
6                   New York City Transit and -- and themselves to  
7                   do something about it. That's my point.

8                   So how much Fusion was is exactly  
9                   the point I'm making.

10                  Q.    You -- earlier you said that  
11                   Express Scripts, to act consistent with the  
12                   industry standards, should have brought Fusion  
13                   to New York City Transit's attention in April,  
14                   May or June of 2016.

15                   I am asking you: What is the basis  
16                   for that opinion?

17                  A.    My basis for that opinion is that  
18                   when you see compound drugs as your number one  
19                   spend, which is what the reports from ESI  
20                   stated, there should have been additional  
21                   drill-down into what was causing compound  
22                   drugs to be the number one drug.

23                   What were the pharmacies?

24                   What were the patients?

25                   What were the drugs?

1 Were they medically necessary?

2 All of the questions that you're  
3 asking should have been asked by ESI, by  
4 drilling down into their own claims data and  
5 presenting that information to New York  
6 Transit Authority so that they and ESI  
7 together could do something about this spike  
8 in compounds.

9 Q. And I'm talking about --  
10 (communications breakup/inaudible).

11 You have no idea how much Fusion  
12 dispensed in April, May or June of 2016; is  
13 that correct?

14 MR. SHIFRIN: Objection. Asked and  
15 answered, by my count four times.

16 But go ahead. One more time.

17 THE WITNESS: I do not know.

18 MS. HELLMANN: Thank you.

19 Q. (BY MS. HELLMANN) Do you know how  
20 much Fusion Pharmacy dispensed the two months  
21 immediately before it was blocked?

22 A. I did see a report showing that. I  
23 don't know remember exactly how much it was.

24 It was a lot.

25 Q. This is my only chance to ask you



1 And that's about Fusion Pharmacy,  
2 correct?

3 A. No. Fusion Pharmacy and any other  
4 pharmacy that was causing problems related to  
5 compounds.

6 Q. What were the pharmacies that were  
7 causing problems related to compounds?

8 A. Well, it seemed like there was  
9 additional compound -- additional pharmacies.  
10 I don't know if they were submitting claims in  
11 April, May or June. I do know that Fusion  
12 Pharmacy was.

13 Q. Do you know how many claims Fusion  
14 Pharmacy submitted in April of 2016?

15 MR. SHIFRIN: Objection. Asked and  
16 answered multiple times already, Sarah.

17 Q. (BY MS. HELLMANN) You don't know,  
18 do you, Ms. Hayes?

19 A. No, I don't.

20 Q. Is there -- let me ask you this:  
21 Is there some industry standard whereby a PBM  
22 needs to report a spike in pharmacy dispenses  
23 to a client?

24 A. No, there's no industry standard.  
25 There's no regulation that they're

1 required to do so.

2 Q. Is there some dollar amount that  
3 should trigger a PBM telling a client about a  
4 pharmacy?

5 A. No. There is no specific trigger.  
6 You know it when you see it. When you see  
7 compound drugs over a million dollars a month,  
8 that is a trigger, yes.

9 Now, is it written down in stone  
10 somewhere?

11 No.

12 But as I pointed out, it -- and as  
13 anyone in the industry would know, compounds  
14 are a rare thing, less than one percent of  
15 utilization.

16 And when you see a million dollars  
17 being spent in compounds, yes, that is  
18 something that you should immediately tell  
19 your client about and work with them to remedy  
20 that. Yes.

21 Q. And did Express Scripts --  
22 (communications breakup) --

23 Did Express Scripts immediately  
24 tell New York City Transit in April, May or  
25 June of 2016 about its compound spend?

1           A.     It reported the compounds -- it  
2     reported the dollar amount of compounds and  
3     that compounds -- compounds was the number one  
4     drug.  Yes, it did that.

5                     But it should have taken a step  
6     further.  The account management team should  
7     have taken a step further and said, "What are  
8     we going to do about it?  Here's our  
9     suggestions."

10           Q.    And what is your basis that the  
11   account team did not take such steps?

12           A.    My basis is that even into 2017,  
13   compounds were still millions of dollars a  
14   month.  So nothing seems to have happened  
15   regarding compound utilizations.

16           Q.    Ms. Hayes, did you read any of the  
17   depositions of any of the account management  
18   people from Express Scripts?

19           A.    No.  Nor was it relevant to my  
20   opinion.

21           Q.    You said -- you've talked about,  
22   though, what the account team should have done  
23   with respect to New York City Transit.

24                     And -- fair that you have no idea  
25   what the Express Scripts account team has

1 testified to in this case.

2 Correct?

3 A. Correct.

4 And that's not relevant to my  
5 opinion. My opinion is that millions of  
6 dollars continued to be spent on compounds.

7 Q. And tell me -- I want to back up  
8 for a second.

9 And is it -- if I hear your -- your  
10 testimony, though, you believe Express Scripts  
11 should have raised the spike in compound spend  
12 to New York City Transit in April, May or  
13 June -- which you acknowledge that they did,  
14 correct?

15 A. They --

16 (Simultaneous speaking.)

17 MR. SHIFRIN: Objection.

18 THE WITNESS: -- they acknowledged  
19 that compound drugs were the number one  
20 drug being spent.

21 Q. (BY MS. HELLMANN) And you have no  
22 idea, sitting here today, what one, two,  
23 three, five pharmacies made up that increase;  
24 is that correct?

25 A. Yeah.

1 I've answered that many times now.

2 Yes.

3 Q. You don't know.

4 And you also did not review any of  
5 the testimony of the account team or anyone  
6 from New York City Transit in terms of any of  
7 the discussions on this issue.

8 Is that fair?

9 A. That is fair.

10 Q. And so is the basis of your opinion  
11 that Express Scripts didn't do what you  
12 believe the industry standard required it do  
13 because the compound spend increased?

14 A. Yes. That is my opinion. Those  
15 are the facts in the matter, that compounds  
16 continued to -- continued to run, you know, in  
17 the millions of dollars a month for a period  
18 through '16 and into '17.

19 Q. And is there any other basis for  
20 your opinion that Express Scripts did not  
21 appropriately respond to New York City  
22 Transit's compound spend, other than the fact  
23 that the compound spend increased thereafter,  
24 month over month?

25 MR. SHIFRIN: Objection. Asked and

1 answered and mischaracterizes prior  
2 testimony.

3 MS. HELLMANN: Go ahead, Ms. Hayes.

4 THE WITNESS: Can you repeat the  
5 question, please?

6 MS. HELLMANN: Sure.

7 Q. (BY MS. HELLMANN) Is there any  
8 other basis for your opinion that Express  
9 Scripts failed to meet an industry standard  
10 regarding New York City Transit's compound  
11 spend other than the fact that the compound  
12 spend increased in 2016 and into 2017?

13 MR. SHIFRIN: Same objection.

14 THE WITNESS: Well, I've answered  
15 that, but you -- let's break down the  
16 question.

17 Can we do that?

18 So let's take the first part of the  
19 question.

20 MS. HELLMANN: Okay.

21 Do you want to answer the first  
22 part of the question?

23 THE WITNESS: Why don't you ask me  
24 just the first part of the question?

25 MS. HELLMANN: Could you read the

1 question back, please, Teri?

2 THE REPORTER: Yes.

3 (The record was read.)

4 THE WITNESS: Okay.

5 So the first part of the question

6 was: based on an industry standard...

7 And I've testified that there is no

8 set-in-stone industry standard other

9 than you kind of know it when you see

10 it.

11 And account management has one of

12 the three big preeminent PBMs in the

13 industry.

14 You know when compounds are more

15 than a million dollars a month, that's

16 something that needs to be brought to

17 your attention.

18 And my opinion that nothing was

19 done, that was effectively done, is

20 evident from the fact that millions of

21 dollars continued to be spent every

22 month on compounds.

23 So that's how I break down that

24 question.

25 Q. (BY MS. HELLMANN) Do you have an

1 New York City Transit spent

2 \$1.3 million on compounds in April of 2016.

3 A. Right.

4 Q. How much did New York City Transit  
5 spend on non-compounds?

6 A. I don't know.

7 Q. So you have no idea what percent of  
8 New York City Transit's compound spend -- I'm  
9 sorry -- prescription drug spend was  
10 compounds.

11 A. No.

12 I did see something on their total  
13 spend, but I don't remember what it was.

14 And it's irrelevant -- irrelevant  
15 to my opinion. A million dollars is a lot of  
16 money for compounds.

17 Remember, compounds are supposed to  
18 be for patients who cannot take commercially  
19 available products. That is a significant  
20 amount of spend of medication that is not  
21 commercially available.

22 Q. Ms. Hayes, you mentioned earlier  
23 and you've mentioned a couple times about this  
24 one to three percent.

25 Do you know if New York City



1 Transit's compound prescription drug was  
2 higher than one to three percent of their  
3 total prescription drug spend?

4 A. I would have to look back in my --  
5 in -- in the documents that were sent to me.  
6 I do believe I did get a total. I don't  
7 remember what it is.

8 Q. And you didn't -- (communications  
9 breakup) -- you didn't include that total in  
10 your report, correct?

11 A. No, I did not.

12 Q. You didn't review the claims data  
13 to come up with that total, correct?

14 A. Correct.

15 Q. And, sitting here today in your  
16 deposition, you have no idea what percent of  
17 New York City Transit's total compound  
18 prescription -- I'm sorry -- total  
19 prescription drug spend was compound drugs.

20 MR. SHIFRIN: Objection. Asked and  
21 answered many times.

22 Q. (BY MS. HELLMANN) Correct?

23 A. Correct.

24 Nor was it relevant -- relevant to  
25 my opinion.

1 Q. Well, Ms. Hayes, why do you keep  
2 talking about the one to three percent as  
3 being -- I think you mentioned it like an  
4 industry benchmark.

5 Is that relevant to you, that one  
6 to three percent number?

7 A. Yes.

8 Q. Okay.

9 So if that's relevant to you, why  
10 is what New York City Transit actually spent  
11 not relevant to you?

12 A. It -- it was relevant. It wasn't  
13 relevant -- I -- I don't honestly remember. I  
14 remember seeing it. I didn't put it in my  
15 report and I don't remember it sitting here  
16 today.

17 If you want to pull up documents,  
18 we can -- we can start pulling up documents  
19 and see what it was.

20 Q. I'm just asking you what you know  
21 today and based on what you've put in your  
22 report.

23 A. And it was significant, and that's  
24 what I put in my report.

25 Q. Looking back at your chart on

1 utilization of compound drugs, said, "These  
2 are the pharmacies that are submitting them  
3 and these are the prescribers. Here's where  
4 they are geographically. You have a problem,  
5 New York City Transit. Let's do something  
6 about it. Let's manage it."

7 That's what ESI should have done.  
8 They should have done that early and often.

9 Q. And tell me what -- (communications  
10 breakup) -- what is the basis for your opinion  
11 that Express Scripts should have broken down  
12 the spend by pharmacies, prescribers and  
13 geographic area.

14 A. My opinion is based on 25 years of  
15 doing this, sitting in hundreds of meetings  
16 where PBMs have gone over utilization, and  
17 where there is a large category of spend where  
18 the PBM offers solutions to manage that spend,  
19 whether it's compounds or diabetic medications  
20 or rheumatoid arthritis medications or  
21 specialty drugs or what have you. That is  
22 their job as a PBM.

23 Q. You didn't sit in any meetings with  
24 New York City Transit and Express Scripts,  
25 true?

1           A.     I was -- I was retained two and a  
2 half months ago. Of course not.

3           Q.     And you didn't read any of the  
4 depositions of the people that would have been  
5 at those meetings, correct?

6           A.     Correct.

7           Q.     Fair that you don't know what was  
8 discussed at these meetings between Express  
9 Scripts and New York City Transit.

10          A.     No. I'm looking at the results.  
11 The results are spend continued and it was not  
12 managed well.

13          Q.     And earlier you -- you mentioned  
14 the solutions that should have been offered.  
15 And I think we've gone through those.

16                 And I think the one that you  
17 believe should have been offered was  
18 terminating or eliminating the pharmacy from  
19 the network, correct?

20          A.     Yes.

21                 And certainly from New York's  
22 network, if there was a special network just  
23 for New York City Transit Authority.

24          Q.     And you don't know one way or the  
25 other whether New York City Transit had a

1 special network.

2 A. I don't think they did have a  
3 special network.

4 But, again, they could have just  
5 eliminated it for that one client or -- you  
6 know, it's outside the scope of what I was  
7 asked to do, to see if they should have  
8 eliminated it for their other clients.

9 Q. Are there any other solutions that  
10 you're -- that you believe Express Scripts  
11 should have offered?

12 A. I think the most expedient solution  
13 would have been to have eliminated this  
14 pharmacy from the network.

15 Q. When was Fusion Pharmacy  
16 eliminated?

17 A. I think they were eventually  
18 eliminated at the end of 2017.

19 Q. Do you have an opinion as to when  
20 they should have been -- or when Express  
21 Scripts should have eliminated them?

22 A. Early on in the relationship, as I  
23 said. The first quarter, at least.

24 Q. The first quarter of 2016?

25 A. Yes. I mean, not the first quarter

1 of the year of 2016, but the first quarter  
2 that they were under ESI's management -- New  
3 York City was under ESI's management, which  
4 would have, I guess, been the second quarter  
5 of 2017.

6 Q. That would have been April, May or  
7 June.

8 A. Yes. Yes. Of 2016. Sorry.

9 Q. And in coming up with that opinion,  
10 would it have been helpful for you to review  
11 the Fusion Pharmacy claims data?

12 A. No, not necessarily.

13 Q. Would it have been helpful to know  
14 if, in April, the spend at Fusion Pharmacy was  
15 \$30,000?

16 Would that have been relevant to  
17 your opinion?

18 A. No.

19 Q. And tell -- and tell me, I guess,  
20 if you're saying that Express Scripts should  
21 have raised Fusion Pharmacy, why would the  
22 spend at Fusion Pharmacy not be relevant?

23 A. Because ESI knew what -- even at  
24 \$30,000, you know -- what was the spend for  
25 \$30,000' worth of compounds?

1 That even seems crazy.

2 It seems crazy that you've got a  
3 Utah pharmacy for a bunch of New York  
4 employees. That seems crazy.

5 Even at \$30,000, that seems like,  
6 you know, kind of a lot of money.

7 Q. So what is the amount of money that  
8 should have been raised -- the amount of money  
9 that Express Scripts needed to see spend at  
10 Fusion Pharmacy to raise it with New York City  
11 Transit?

12 A. I -- I can't tell you that.

13 I can tell you that certainly  
14 \$30,000 -- even \$30,000 should have raised  
15 suspicion.

16 When you have a group of employees  
17 that are all in New York that are now using a  
18 Utah pharmacy -- how did they -- how did those  
19 employees even know to send this to a Utah  
20 pharmacy?

21 Why would they have done that?

22 Those would have raised a lot of  
23 red flags to me, even \$30,000' worth of  
24 claims.

25 Q. But you have no opinion as to was

1 that spend number would be?

2 A. No.

3 Remember, compounds are very rare.

4 They should be very rare. It's when a  
5 commercially available product does not suit  
6 that patient's needs, that individual  
7 patient's needs.

8 And so it just seems like even  
9 \$30,000 is a lot of money.

10 How many patients could there have  
11 been that had some need that isn't satisfied  
12 by a very robust pharmaceutical industry?

13 Q. Looking at the chart on Page 10, it  
14 looks like the -- the total of these ten  
15 pharmacies is \$67 million and change.

16 Do you see that?

17 A. Yes.

18 Q. Do you have an opinion as to  
19 whether any of the \$67 million in compound  
20 claims reflected on this charge (sic) were  
21 fraudulent?

22 A. No.

23 Q. And let's go to the chart on  
24 Page 11.

25 You talk about Dr. Cohen and you



1 A. I'm not sure I said "big" claims.

2 I said -- if I did, my apologies.

3 Express Scripts should have looked  
4 at the compound claims and reported what the  
5 breakdown of those compound claims were.

6 Exactly as -- as Aon did later on,  
7 ESI should have done early on and said, "Here  
8 are the drugs. Here's the physicians. Here's  
9 the pharmacies. We think there's a problem.  
10 Let's try and fix it."

11 Not just reported the two high-cost  
12 claims over \$15,000. There were claims under  
13 \$15,000.

14 I mean, as we see here on Page 8 of  
15 my report, "Cost per script," there are many  
16 claims that were 3,000, 900, 9,000, 6,000, you  
17 know, 2,000, 1,000. There were many claims  
18 under \$15,000 that contributed to this  
19 \$67 million' worth of compounds.

20 And my basis for that opinion is  
21 25 years in this business of sitting with  
22 clients every quarter and going through what  
23 their utilization is and having PBMs report  
24 the utilization.

25 And, again, whether it's compounds

1 or diabetic medication or things like  
2 cholesterol medication, what is the problem  
3 with our membership and how do we go about  
4 managing that?

5 That is the role of a PBM.

6 Q. And sitting in these meetings with  
7 the clients and other PBMs -- I understand you  
8 haven't been in one with Express Scripts,  
9 correct?

10 A. Not lately, no.

11 Q. When is the last time you sat with  
12 a client at Express Scripts in one of these  
13 meetings?

14 A. Oh, it's got to have been maybe  
15 five years or more.

16 Q. And in sitting with clients and the  
17 PBMs in these -- in these meetings, what --  
18 what do the contracts between the client and  
19 the PBM say about reporting and the reports  
20 that will be provided?

21 MR. SHIFRIN: Object to form.

22 THE WITNESS: I'm sorry.

23 Did you say something, Mr. Shifrin?

24 MR. SHIFRIN: I just objected to  
25 form.

1           You can answer.

2           THE WITNESS:   Okay.

3           Well, it's -- it's outside the  
4           scope of what I've been asked to do,  
5           but -- but in these meetings, you're  
6           asking me what the contracts actually  
7           say.

8           Some of the contracts are very  
9           specific with clients as to what is  
10          going to be reviewed that, you know --  
11          be provided as a report package and  
12          what's going to be reviewed.  Other  
13          contracts are less detailed.

14          But in almost all the situations  
15          there is a clause in there that there  
16          will be an account management team.  
17          That account management team will bring,  
18          you know, utilization trends to the --  
19          to the client and work on those trends,  
20          you know, in a -- in a way to better  
21          manage the plan.

22          Q.     (BY MS. HELLMANN)  What do the  
23          contract requirements for New York City  
24          Transit say on that issue?

25          MR. SHIFRIN:  Object to form.

1 THE WITNESS: Well, as I say in my  
2 report: "Section 4.2" -- says that --  
3 "...provide customer service in a  
4 prudent and expert manner, including  
5 investigations and reviewing..." --  
6 "...claims..."

7 And then "Section 4.1" says a  
8 "...degree of care and reasonable  
9 diligence that an experienced and  
10 prudent plan administrator..." --  
11 "...under" -- the -- "...group health  
12 plan familiar with such matters  
13 would..." -- act.

14 And so that's where I'm saying that  
15 they had a responsibility to bring these  
16 issues to New York City Transit's  
17 attention.

18 Q. (BY MS. HELLMANN) Are you aware of  
19 any -- (communications breakup/inaudible) --  
20 sorry.

21 Are you aware of any provision in  
22 the contract between -- (communications  
23 breakup/inaudible) --

24 THE REPORTER: Okay. Try again.

25 Q. (BY MS. HELLMANN) Are you aware of

1 any provision in the contract between Express  
2 Scripts and New York City Transit that talks  
3 about the reports that Express Scripts would  
4 provide?

5 A. I believe there was something in  
6 there, but I would to have look at the  
7 contract. We can bring that up as an exhibit.

8 MS. HELLMANN: Beth, let's bring up  
9 the contract, please.

10 MS. BOZICEVIC: The document that's  
11 previously been marked as ESI Exhibit 7  
12 has been added to the chat.

13 (Exhibit No. 7 Previously Marked.)

14 Q. (BY MS. HELLMANN) Do you have that  
15 document in front of you, Ms. Hayes?

16 A. I've downloaded it and I'm trying  
17 to open it. Hold on. Let's see.

18 I've got so many documents open  
19 now. I'm trying to find Seven.

20 I've got to start closing some of  
21 these, because I think that --

22 (Pause.)

23 I'm going to start closing some of  
24 these documents -- earlier documents, if  
25 that's okay with you.

1 Q. And so --

2 A. I think with -- I tried to, in the  
3 last five minutes, go through a 355-page  
4 document as well as I can, to show you what I  
5 think, that it was a requirement that they  
6 meet, review reports and -- and be  
7 consultative in nature and review what's going  
8 on with the account.

9 MR. SHIFRIN: I would like to note,  
10 Sarah, that the witness is not here, nor  
11 has she been retained, to, strictly  
12 speaking, interpret contracts.

13 She was retained to interpret a  
14 specific industry standard clause that  
15 appears in a contract, and the rest of  
16 this is all legal analysis that is not  
17 within the scope of Mrs. Hayes'  
18 retention.

19 But, by all means, go ahead.

20 MS. HELLMANN: I 100 percent agree  
21 with you, she is not qualified to talk  
22 about legal conclusions, Max. I think  
23 that's actually one thing we are going  
24 to completely agree on today.

25 Q. (BY MS. HELLMANN) Ms. Hayes, in

1 your review of the contract did you review the  
2 exhibit that talked about what reports would  
3 be provided to Transit?

4 A. Well, we could -- can you direct me  
5 to where that is?

6 Q. 110.

7 A. 110 of 1- -- of 355?

8 Q. Yes.

9 A. Yes. There is a sample report  
10 package. Yes.

11 Q. Did you review that sample report  
12 package to -- well, let me start there.

13 Did you review the sample report  
14 package?

15 A. Yes.

16 Q. Okay.

17 Did you see if there were any  
18 reports in there that were not provided to  
19 Transit?

20 A. No, I don't believe there were.

21 Q. Okay.

22 You can put aside the contract,  
23 ma'am.

24 A. Okay.

25 Q. Going back to your report, on

1 Page 11 -- when you were talking about the red  
2 flags that you saw in the charts that Aon  
3 prepared in February of 2018 and you talked  
4 about the members that are reflected on  
5 Page 9 -- the chart in Page 9 -- and -- do you  
6 know and do you have an opinion if --

7 MS. HELLMANN: Well, strike that.

8 Q. (BY MS. HELLMANN) You would agree  
9 that as part of the base Fraud, Waste and  
10 Abuse Services, Express Scripts wasn't looking  
11 at particular members, correct?

12 A. The focus was not -- in the base  
13 product the focus was not members. That is  
14 not to say that they should not have been  
15 looking at members within a broader scope.

16 Q. And what's the basis --  
17 (communications breakup/inaudible) --

18 THE REPORTER: Can you repeat --

19 Q. (BY MS. HELLMANN) --  
20 (communications breakup/inaudible) -- despite  
21 not being in the Enhanced Fraud, Waste & Abuse  
22 Program?

23 THE REPORTER: I didn't hear the  
24 beginning of your question.

25 Q. (BY MS. HELLMANN) What is the



1 basis for your opinion that Express Scripts  
2 should have been looking at members as part of  
3 the base fraud monitoring?

4 A. As I just testified, the focus in  
5 the base program was not specifically members,  
6 was a member committing fraud.

7 But in the base program they should  
8 have been looking at members from the  
9 viewpoint -- I mean, let's say an absurd  
10 example.

11 What if one member submitted 40,000  
12 claims?

13 Well, I think they should have  
14 looked at that member, and was that member --  
15 like some member would have 40,000  
16 prescriptions in a day, a week, a month,  
17 whatever.

18 And it's an absurd example.

19 But I'm saying, as their overall  
20 Fraud, Waste & Abuse Program, yes, they should  
21 have been looking at members from a metric  
22 point of view --

23 (Simultaneous speaking.)

24 Q. -- (inaudible) --

25 A. -- (inaudible) -- in evaluating if

1 there's something else that needs to be  
2 investigated.

3 Q. And I -- and I -- (communications  
4 breakup/inaudible) -- that.

5 My question is: What is the basis  
6 for that opinion?

7 A. Well, early on this morning we  
8 brought up a description from ESI of what  
9 their basic fraud program was, and it seemed  
10 like that that was something -- we could bring  
11 it up again -- but as I recall from this  
12 morning it seems like that was a basic, you  
13 know, metric that they would be looking at,  
14 broadly.

15 MS. HELLMANN: Yeah. Let's bring  
16 it up again.

17 Beth, you might have to go back in  
18 the chat.

19 MS. BOZICEVIC: I added back to the  
20 chat the document we previously marked  
21 as ESI Exhibit 117.

22 Q. (BY MS. HELLMANN) Ms. Hayes, why  
23 don't you take a look at that and let me know  
24 where -- what you're alluding to.

25 A. Well, there's certainly -- on the

1 drilled down.

2 Am I asking that they provide a  
3 report specifically out of the Fraud, Waste &  
4 Abuse Unit that drilled down into top members?

5 No. That is a mischaracterization  
6 of my testimony. That is not what I said.

7 Q. Okay.

8 So we can agree that none of the  
9 reports that are listed on Page 4 and 5 of  
10 this document, Express Scripts had a duty or  
11 an obligation to provide Transit.

12 MR. SHIFRIN: Object to form.

13 THE WITNESS: Well, they -- they  
14 didn't have a duty because New York  
15 didn't purchase the Enhanced Fraud,  
16 Waste & Abuse Program.

17 These reports, per se, they did not  
18 have an obligation and a duty to provide  
19 in this format.

20 They did have an obligation, in my  
21 mind, to take the top category,  
22 especially since it was so abnormal for  
23 a category like compounds, and drill  
24 down and provided some additional  
25 information into who, what, why, how,

1 where?

2 Like: What's going on with  
3 compounds?

4 Again, just as if it was a diabetic  
5 category or anticholesterol category,  
6 they should have drilled down and said,  
7 "Wow, this is a lot of utilization.  
8 Let's look at it. Let's see what the  
9 problem is. Let's try and rectify it."

10 So I'm not saying that they had an  
11 obligation and duty to do the Enhanced  
12 Fraud, Waste & Abuse Program, because  
13 New York didn't purchase that. But they  
14 did have an obligation to manage the  
15 Pharmacy Benefit.

16 Q. (BY MS. HELLMANN) And other  
17 than -- (communications breakup) -- other than  
18 your 25 years of experience in sitting in  
19 these meetings, do you have any other basis  
20 for that opinion?

21 A. Other than what we've just reviewed  
22 from in the contracts.

23 Q. And then other than what you saw in  
24 the contract, and that was the provision  
25 regarding that they would provide quarterly

1 resulted in this balloon?

2 A. Yeah. So there was a change in the  
3 Compounding Act due to several years before  
4 there had been the New York -- I'm sorry --  
5 the New England Compounding Center issue,  
6 where a compounding facility had essentially  
7 killed patients because the -- the sanitation  
8 wasn't up to speed.

9 And so there were products that  
10 were tainted that eventually killed patients  
11 and -- so that kind of resulted in a moral  
12 panic and legislation was passed to change  
13 compounding facilities, to have additional  
14 controls.

15 And, in addition, compounding  
16 facilities could then -- also with this act  
17 there was the ability where compound  
18 facilities could solicit patients.

19 So that was also a change in the  
20 Compounding Act.

21 Q. Were you aware of the fact that in  
22 2014, '15, a number of PBMs rolled out  
23 exclusion programs that clients could use to  
24 stop covering compounds?

25 A. Yes, of course, including the

1 compound program that ESI had.

2 Q. Would you expect that after those  
3 programs were ruled out, the benchmark of  
4 compounds would increase?

5 A. Well, it's not what I expect. It's  
6 what happened.

7 So what happened was that, still in  
8 '14, '15, '16, and even into '17, and even  
9 today, we see compounders that are compounding  
10 prescriptions that are commercially available,  
11 for medication that's commercially available.

12 Q. The study that you cite, what year  
13 was the study?

14 A. I don't think there was a date on  
15 that study.

16 Let me go back and look at that.

17 Well, I pulled it up in May 2020.  
18 So I don't know when -- when the study was.  
19 So it's -- it's still on their web page as of,  
20 you know, last year.

21 Q. Do you know if the -- it was a  
22 study that looked at the timeframe of the  
23 Express Scripts-New York City Transit  
24 contract, so 2016 to 2019?

25 A. No, I -- I don't.

1 saying it is fraudulent. It appears  
2 consistent with fraudulent drug problems.

3 Q. And with respect to the member in  
4 Paragraph 18, tell me why that member's claims  
5 show a, quote, pattern indicating fraudulent  
6 claim submission.

7 A. Well, I didn't say that in  
8 Paragraph 18. I just said: Here's another  
9 example of some similar -- the same behavior  
10 exhibited where the member is going to CVS for  
11 ibuprofen prescribed by a physician, and then,  
12 almost a few days later, they're having a  
13 prescription dispensed by Fusion Pharmacy,  
14 prescribed by Honig.

15 So wouldn't -- you know, if you had  
16 had a need for medication, wouldn't you have  
17 talked to that prescriber that you got the  
18 ibuprofen from?

19 That -- that's all I'm saying.

20 I'm not saying that it is  
21 fraudulent. I'm saying that it has a pattern  
22 of what we see as fraudulent claims in the  
23 industry.

24 Q. And fair, that you have no idea  
25 what that person spoke to his or her doctor

1 about?

2 A. No. I just looked at the claims  
3 data.

4 Q. And then tell me about the patient  
5 that's set forth in Paragraph 19.

6 What's the relevance or import to  
7 that?

8 A. Well, again, it's the same kind of  
9 pattern that we're seeing, where a member is  
10 getting prescriptions filled by a Rite Aid for  
11 amoxicillin by one physician, and then a few  
12 days earlier they have these prescriptions  
13 that are dispensed by Konig -- prescribed by  
14 Konig and dispensed by Fusion.

15 Again, it's the same pattern that  
16 you're seeing. So you're seeing this  
17 consistent pattern of members getting  
18 prescriptions filled with a local physician  
19 and a local pharmacy, and then all of the  
20 sudden they're also getting them filled from  
21 these physicians, that are all consistent with  
22 other patients.

23 I mean, that just doesn't seem  
24 like -- that doesn't seem normal to me.

25 Like, how would someone in a city



1 as big as New York, all of the sudden these  
2 patients are seeing their -- kind of, like,  
3 what I would say, normal physicians, and then  
4 they're all going to this other Honig guy,  
5 this Honig and Cohen and -- Honig physician  
6 and going to this pharmacy in Salt Lake City.  
7 It just doesn't -- or not Salt Lake City, but  
8 in Utah. It just doesn't make sense to me.

9 Like, how do these patients just  
10 out of the blue all decide: Oh, let's run to  
11 this pharmacy -- this physician named Cohen  
12 and get these prescriptions filled from a  
13 pharmacy 3,000 miles away?

14 This is a red flag.

15 I'm not saying this is fraudulent.  
16 I'm not saying I guarantee it's fraudulent --  
17 although later we found out it was. But at  
18 this point in time this is a red flag. This  
19 is something that should have been brought up,  
20 discussed, rectified, managed.

21 Q. And in your mind, looking at the  
22 claims data, is it common sense that this  
23 might be a red flag?

24 A. Yes.

25 Q. You go on in Paragraph 20 -- and

1 I'm looking at, I guess it's the  
2 second-to-the-last para- -- sentence in that  
3 paragraph.

4 You said: "This pattern should  
5 raise the question of why ten members have all  
6 decided to go to the same physician and need  
7 the same compounded medications from a  
8 pharmacy across the country."

9 And so the -- the analysis that you  
10 just set forth in Paragraphs 17, 18 and 19,  
11 was that the same for all ten members that are  
12 identified in Exhibit C?

13 A. Yes.

14 Q. And you said they "...all decided  
15 to go to the same physician..."

16 Now, the member in Paragraph 17  
17 went to a Castano and the member in  
18 Paragraph 18 went to a Honig and the member in  
19 Paragraph 19 went to Konig (sic).

20 So who's the same physician that  
21 all ten people went to?

22 A. Well, there were overlaps --  
23 (Simultaneous speaking.)

24 Q. At least three physicians --

25 A. At least three physicians, right.

1 But there were overlaps in the data  
2 that I looked at.

3 Again, and it's the same pattern  
4 of: You're going to a local physician and a  
5 local pharmacy for typical manufactured  
6 products, medications, and then all of the  
7 sudden now you're going to this -- these other  
8 physicians for -- and this other pharmacy  
9 halfway across the country -- or all the way  
10 across the country.

11 Q. You also say that these -- these  
12 members received the same compounded  
13 medication.

14 What's your basis that the  
15 compounded medication was the same for all ten  
16 of these members?

17 A. Well -- okay. You're interpreting  
18 that sentence a little differently than the  
19 way I wrote it.

20 I meant that it was all compounded  
21 medications.

22 Q. Okay.

23 So the data analysis that you did,  
24 I could summarize it -- and tell me if I'm not  
25 summarizing it correctly -- showed that ten

1 receiving this fraud tip?

2 A. Well, I think I also said that they  
3 should have investigated this situation.

4 Q. What should they have done?

5 A. Conducted investigations around  
6 these pharmacies. They had contractual  
7 obligations to make sure that there were not  
8 fraudulent pharmacies in their network.

9 And so when they got tip that  
10 there's some fraud going on here, I think that  
11 they should have investigated these.

12 And, in fact, I believe they did  
13 reopen the investigation of Fusion Pharmacy.

14 Q. And I -- just so we're clear, when  
15 you say "these," you're referring just to  
16 Fusion Pharmacy and REP Network, LLC?

17 A. Yes. Yes. And I don't have any  
18 belief that REP was in the network.

19 Q. I'm sorry. What was that, ma'am?

20 A. I don't have any reason to believe  
21 REP was in the network, but I don't know if  
22 they were -- REP was working under -- like,  
23 some pharmacies have, like, Joe's Pharmacy,  
24 doing business as Mary's Pharmacy. Although I  
25 don't know that, so...

1 Q. And I think you say that based upon  
2 your review, Express Scripts did investigate  
3 Fusion Pharmacy.

4 A. I think that investigation was  
5 reopened, yes.

6 Q. You indicate on your report that,  
7 in Paragraph 21: "At the very least, once  
8 Express Scripts received the fraud tip, it  
9 should have pulled the prescription activity  
10 for the implicated members itself. Had it  
11 done so, it would have noticed highly  
12 irregular activity..." -- "...and could have  
13 raised the issue with..." -- Transit.

14 Do you believe that Express Scripts  
15 should have done this upon receiving the fraud  
16 tip?

17 A. Yes.

18 Q. And so I just want to make sure  
19 I'm, kind of, clear on everything you believe  
20 Express Scripts should have done upon  
21 receiving the fraud tip.

22 It should have looked at the  
23 members -- or identified -- looked at the  
24 prescription history of the members and it  
25 should have investigated Fusion.

1 Is that correct?

2 A. Yes.

3 MR. SHIFRIN: Object to form, to  
4 the extent that you're asking everything  
5 that Express Scripts should have done.  
6 That's beyond the scope.

7 But go ahead.

8 Q. (BY MS. HELLMANN) Well, do you  
9 have an opinion as to whether Express Scripts  
10 should have done anything else upon receiving  
11 this fraud tip?

12 A. As I testified, I think that  
13 they -- Express Scripts should have pulled the  
14 prescription utilization for these numbers,  
15 looked at what was going on, opened the  
16 investigation -- which I think that they  
17 re-did -- and immediately terminated or  
18 suspended -- and there is a difference --  
19 Fusion's utilization in the network.

20 Q. Have you reviewed the contract  
21 between Express Scripts and Fusion Pharmacy?

22 A. No, I haven't.

23 Q. Do you know if there are provisions  
24 in that contract regarding the suspension of  
25 Fusion Pharmacy?

1 A. No.

2 Q. Do you know what the grounds for  
3 termination of Fusion Pharmacy is per the  
4 agreement between Express Scripts and Fusion?

5 A. No. I wasn't asked to do that.

6 MS. HELLMANN: Beth, can we look at  
7 Exhibit 71, please.

8 (Exhibit No. 71 Previously Marked.)

9 MS. BOZICEVIC: The document  
10 previously marked as ESI Exhibit 71 has  
11 been added to the chat.

12 Q. (BY MS. HELLMANN) Ms. Hayes, I've  
13 handed you what's been previously marked as  
14 Exhibit 71.

15 And this wasn't on your list of  
16 documents that you've reviewed so you might  
17 want to take a minute and scroll through it.  
18 And just let me know when you're ready.

19 A. (Witness reviewing exhibit.)

20 Q. Ms. Hayes, are you ready?

21 A. Not quite. I'm trying to figure  
22 out --

23 (Simultaneous speaking.)

24 Q. I don't want to hurry you. I just  
25 wasn't sure.

1 MS. BOZICEVIC: The document we  
2 previously called ESI Exhibit 117 has  
3 been added back to the chat.

4 Q. (BY MS. HELLMANN) And, Ms. Hayes,  
5 in looking at what's been marked as --  
6 previously marked as Exhibit 117 -- and I'm  
7 looking at the top of Page 2, which is an area  
8 that you've referred to before.

9 In your review of the Fusion  
10 investigation, did you see evidence where  
11 Express Scripts requested -- I'm looking at  
12 the first bullet point -- "prescriptions,  
13 delivery records/signature logs" from Fusion?

14 A. Yes. I did.

15 Q. As part of the Fusion  
16 investigation, did Express Scripts send member  
17 verification letters?

18 A. Yes.

19 Q. As part of the Fusion  
20 investigation, did Express Scripts send  
21 prescriber verification letters?

22 A. Yes.

23 Q. As part of the Fusion  
24 investigation, did Express Scripts do a  
25 purchase verification?



1           A.     I think they asked who the  
2     wholesalers were that Fusion was -- was using.

3           Q.     What's the purpose of the purchase  
4     verification?

5           A.     Well, if a pharmacy is dispensing a  
6     bunch of drugs, you want to make sure they  
7     bought a bunch of drugs.

8           Q.     What, in your opinion, did Express  
9     Scripts -- or, actually, let me ask it even  
10    broader.

11                     Why, in your opinion, was the  
12    Express Scripts investigation of Fusion  
13    Pharmacy inadequate?

14           A.     Because, short of an admission of  
15    guilt by Fusion that they were submitting  
16    fraudulent claims, ESI was taking their word  
17    that, you know -- that they weren't committing  
18    fraud.

19           Q.     So, tell me what you believe  
20    Express Scripts should have done with respect  
21    to the investigation of Fusion.

22           A.     Well, first of all, the -- ESI  
23    asked Fusion, basically -- I'm just trying to  
24    get directly to my report.

25                     And I'm recalling a document where

1 they -- you know...

2 So there were situations where  
3 ESI -- in Rutkowski's deposition he states  
4 that the role of the FWA Unit is to verify  
5 that the prescriber prescribed the medication  
6 and that the patient received the medication,  
7 the pharmacy dispensed the medication.

8 In each of these three situations,  
9 ESI just takes their word for it without any  
10 further investigation, you know, that those  
11 events really happened.

12 So what we -- what we do in  
13 investigations is that we verify that  
14 information. And I don't think this was fully  
15 verified.

16 Q. Okay.

17 So let's break those down now.

18 I think you said Mr. Rutkowski said  
19 that they verified that the pharmacy received  
20 a prescription.

21 Is that right?

22 A. Right.

23 Q. Okay.

24 That a member received a  
25 prescription.

1 A. Yes.

2 Q. And that the pharmacy dispensed the  
3 prescription.

4 A. Right.

5 Q. Okay.

6 How -- in your opinion, how do you  
7 verify that a member received the  
8 prescription?

9 A. Well, you would ask the member.

10 Q. Did Express Scripts ask the members  
11 in this case?

12 A. I believe they did.

13 But I don't know if they tied  
14 everything together. I didn't see where that  
15 was tied together, where that particular  
16 member got that particular prescription. I --  
17 I didn't see that.

18 And as Rutkowski says, you know:  
19 Am I saying that the pharmacy is answering  
20 accurately or truthfully?

21 Maybe, maybe not, but that's the  
22 answer they've provided.

23 I mean, so he's just really, kind  
24 of, taking their word that, you know: Yeah,  
25 the member got the prescription and I'm just

1 going to take their word that they did get it.

2 Q. Do you believe that the industry  
3 standard requires Express Scripts -- or  
4 required Express Scripts to do something else?

5 And I'm talking specifically about  
6 the member receiving the prescription, just  
7 that part of it.

8 A. Well, I can tell you what we do.  
9 We verify outside the system, if you will.

10 So even if we get a UPS or United  
11 States Postal Service verification, we then go  
12 outside to the tracking system and verify that  
13 that patient did get that prescription.

14 We verify it by a third party,  
15 which that is standard for investigators to  
16 verify information from suspected members or  
17 suspected pharmacies.

18 Q. What if the member says that he or  
19 she received the prescription?

20 A. I think all of these were -- were  
21 sent. They were not picked up. I mean, a New  
22 York member isn't going to drive to Salt Lake  
23 and get a -- or Utah and get a prescription.

24 Q. Did you see where Express Scripts  
25 reached out to members and asked the member if

1 he or she received the prescription?

2 A. I believe they sent prescrip- --  
3 patient provider letters.

4 I don't see where it got tied back  
5 to specifically these prescriptions, but --

6 (Simultaneous speaking.)

7 Q. Did you --

8 A. -- so --

9 Q. Did you see any members provide  
10 letters back, verifying that they received the  
11 prescriptions from Fusion Pharmacy?

12 A. Yes. Some of the members did  
13 receive prescriptions from Fusion.

14 Q. So in that case would you agree  
15 that Express Scripts verified that the member  
16 received the prescription?

17 A. Yes.

18 And, as Rutkowski says, they may or  
19 may not have been providing the truth.

20 Q. What else was Express Scripts  
21 supposed to do with respect to verifying that  
22 a member received a prescription, other than  
23 send a letter asking the member?

24 A. As I just said, they could have  
25 tracked that separately from the postal

1 service that delivered it.

2 Q. Did you see where Express Scripts  
3 asked Fusion Pharmacy for delivery receipts  
4 for the prescriptions it was looking at?

5 A. Yes.

6 Q. Did Fusion Pharmacy provide the  
7 delivery receipts?

8 A. Yes.

9 But they -- I don't think they  
10 verified them through an outside tracking  
11 service.

12 Q. In this case, who was the delivery  
13 service that sent the prescription?

14 A. UPS or FedEx or United States  
15 Postal Service. I -- I can't remember which  
16 one.

17 Q. I want you to assume it's FedEx.

18 What do you believe Express Scripts  
19 was supposed to do other than obtain the  
20 delivery receipts from Fusion?

21 A. Go to the U- -- go to the FedEx  
22 tracking services -- tracking number service  
23 and verify that that did get received.

24 Q. Do you know how long you're able to  
25 go into FedEx's system and track the tracking

1 number?

2 A. Oh, I -- I think it's a fairly long  
3 time.

4 And --

5 (Simultaneous speaking.)

6 Q. Go ahead.

7 A. No. Go ahead.

8 Q. What -- and if I understand it, the  
9 basis for your opinion that Express Scripts  
10 needed to go to a third-party vendor -- or I  
11 guess in this case UPS, USPS or Federal  
12 Express -- and actually confirm the tracking  
13 numbers, what's the basis for that opinion?

14 A. Because that verifies it through a  
15 third-party, objective source.

16 Q. And do you believe that is the  
17 industry standard?

18 A. That's what we do.

19 Q. And other than what you do, do you  
20 have any basis that that's the industry  
21 standard?

22 A. Again, there's no bible on industry  
23 standard here.

24 So I have heard from other  
25 investigators that that's what they do, as

1 well. They go outside.

2 I mean, I don't think that we're  
3 geniuses for figuring this out.

4 Q. What other investigators told that  
5 you that's what they do, they go outside?

6 A. I -- I don't remember who I've  
7 talked to.

8 But, again -- (pause) --

9 Q. Are you aware of any articles,  
10 studies, that show that a PBM needs to  
11 independently verify from Federal Express,  
12 USPS or UPS the delivery of the medication?

13 A. No. But I do know that  
14 investigative techniques are to verify through  
15 an outside party, an outside, unbiased party.  
16 That's what investigators do.

17 Q. Do you believe -- or I guess:  
18 What, if anything, else should Express Scripts  
19 have done with respect to the investigation of  
20 Fusion Pharmacy?

21 A. Regarding a delivery of the  
22 medication or in general?

23 Q. Okay.

24 Well, in general. I think we've --  
25 we've covered the delivery of the medication,



1 unless there's something else they should have  
2 done other than verify with Federal Express,  
3 USPS or UPS.

4 A. No.

5 So anything addition- -- additional  
6 do that?

7 I do think they should have asked  
8 wholesalers for the actual purchase orders,  
9 invoices, that Fusion really did buy all of  
10 these medications.

11 Q. What did Express Scripts ask the  
12 wholesalers for?

13 A. I don't think I -- I saw anything.  
14 I think that what I remember seeing was ESI  
15 asked Fusion what wholesalers they used.

16 Q. Did you -- did you review any  
17 information directly from wholesalers to  
18 Express Scripts?

19 A. No.

20 Q. Would that have been relevant --  
21 relevant to your opinion regarding the  
22 information that Express Scripts received from  
23 wholesalers?

24 A. Yes, of course.

25 Q. Is there anything else that you

1 Q. Ma'am, there's nowhere in your  
2 report about what drugs were on some  
3 harmful -- an FDA harmful list.

4 So I'm just asking you today as to  
5 what you know.

6 Do you know if any of the drugs  
7 that are ingredients that Fusion Pharmacy  
8 dispensed were on an FDA harmful list?

9 A. Yes.

10 And I would have to bring up both  
11 the list and the documentation that Rutkowski  
12 got, and I could correlate that for you.

13 But I don't -- I did not memorize  
14 it. I'm sorry.

15 Q. And you didn't include it in your  
16 report either, did you?

17 A. I'm sorry. I did not.

18 (Pause.)

19 Because again, to me, there were so  
20 many red flags here.

21 Q. Do you know if the contract between  
22 Express Scripts and Fusion allows Express  
23 Scripts to terminate Fusion for red flags?

24 A. No, I don't.

25 But, again, the point of me saying

1 and "audit."

2 Can you explain that or break that  
3 down for me?

4 Q. Did you see a spreadsheet that  
5 identified tens of -- dozens of audits of  
6 Fusion Pharmacy?

7 A. I saw a spreadsheet that was a  
8 chronological series of events. We asked for  
9 patient verification. We asked for this. We  
10 asked for that. So I did see that.

11 I guess I was concerned on that one  
12 audit.

13 Q. Understood.

14 Did you review anything that showed  
15 Express Scripts performed an on-site audit of  
16 Fusion Pharmacy?

17 A. No.

18 Q. Would that have been relevant to  
19 your opinion?

20 A. Yes.

21 But, I mean, which opinion? I  
22 guess, is the question. I have three opinions  
23 in this matter. And it certainly wasn't  
24 relevant to the Opinion No. One or Opinion  
25 No. Three.

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1 Q. Would it have been irrelevant if  
2 you offered an opinion as to Express Scripts'  
3 investigation/audit of Fusion Pharmacy?

4 A. If they had done an -- an on-site  
5 investigation, yes. It would have been  
6 relevant to Opinion Two, in that thought.

7 Q. In your review of the information  
8 related to Fusion Pharmacy, are you aware of  
9 any documentation, other evidence, that any  
10 claim submitted by Fusion Pharmacy was  
11 fraudulent?

12 A. Was I -- I'm sorry. I'm -- I'm  
13 trying to understand the question better.

14 Was I aware -- am I aware of Fusion  
15 Pharmacy submitting fraudulent claims?

16 Is that what you're saying?

17 Q. Yes.

18 A. I mean, outside this case or within  
19 this case?

20 I --

21 (Simultaneous speaking.)

22 Q. Let me --

23 A. -- (inaudible) --

24 Q. Let me break it down.

25 Did you see any evidence that

253

1 Fusion Pharmacy submitted a claim to Express  
2 Scripts in which the member did not  
3 receive...?

4 A. No.

5 I do know now that Fusion Pharmacy  
6 was involved in healthcare fraud and kickback  
7 schemes.

8 Q. And what's the basis for that  
9 opinion, ma'am?

10 A. It's not in my report, but it is  
11 available -- well, let me take that back.

12 I want to make sure, you know, that  
13 I'm correct.

14 So -- it's not in my report. If it  
15 is -- if I subsequently find something, I will  
16 add it.

17 Q. Ms. Hayes, sitting here today, do  
18 you have any basis for the statement that  
19 Fusion was involved in a -- in a kickback  
20 scheme?

21 A. No.

22 Q. So let me go back again.

23 I think you said you did not see  
24 any evidence that a claim submitted by Fusion  
25 to Express -- I'm sorry -- that Fusion

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1 submitted a claim to Express Scripts that a  
2 member did not receive.

3 A. I -- I've answered that, really, a  
4 lot. I'm sorry. We've gone through the  
5 whole: Did they receive it?

6 How would you have verified it?

7 Q. I --

8 (Simultaneous speaking.)

9 A. So --

10 Q. -- understand.

11 I'm asking you: In your review of  
12 all the documents of Fusion Pharmacy, did you  
13 see any evidence that Fusion Pharmacy  
14 submitted a claim to Express Scripts in which  
15 a member or patient did not receive...?

16 A. I'm not sure. I'm not sure I went  
17 through every single one of Fusion's claims  
18 and then kicked it over to a delivery  
19 manifest. I did not do that, no.

20 Q. Did you see any evidence in the  
21 documents that you reviewed that Fusion  
22 Pharmacy submitted a claim to Express Scripts  
23 without a valid prescription?

24 A. I didn't look at every one of --  
25 no, I did not do that. I did not look at

255

1 every one of Fusion's prescriptions.

2 So I -- I can't say "yes" or "no."

3 Q. You certainly didn't -- sitting  
4 here today, you can't tell me about something  
5 you saw or a piece of evidence or a piece of  
6 paper that you saw, in which Fusion submitted  
7 a claim to Express Scripts without a valid  
8 prescription.

9 MR. SHIFRIN: Objection. Asked and  
10 answered multiple times now, Sarah.

11 MS. HELLMANN: Go ahead, Ms. Hayes.

12 THE WITNESS: I can't say that. I  
13 can't say one way or the other.

14 What I did see -- what I did see  
15 was that there was a prescription.  
16 Whether it was valid or not -- that's  
17 why I'm struggling with the question.

18 Whether it was valid or not, I  
19 don't know. I didn't independently  
20 review it. I didn't independently  
21 review it with a physician. I didn't  
22 independently review it with a patient.  
23 I don't know, sitting here, if it was  
24 valid.

25 And I certainly did not look at

256

1 100 percent of Fusion's claims  
2 submissions and whether or not they were  
3 valid.

4 To me, they looked highly  
5 suspicious because of the "check the  
6 box" nature of the prescription orders.  
7 That's not how a compound prescription  
8 is typically, if it is a valid  
9 prescription, written, because it means  
10 that there's a multiple amount of  
11 patients that might be getting that  
12 prescription.

13 It raises red flags to me. It --  
14 it makes me want to do a more thorough  
15 investigation when I see something like  
16 that.

17 So I cannot sit here and say every  
18 one of Fusion Pharmacy's prescriptions  
19 that were submitted to ESI on behalf of  
20 the New York City Transit Authority were  
21 valid or were not valid. I cannot say  
22 that, no.

23 MS. HELLMANN: Thank you.

24 Why don't we take a break.

25 Ten minutes?



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1 Q. Okay.

2 Is there anything else you believe  
3 that Express Scripts should have done in  
4 addition to the investigation -- or the steps  
5 that it took with respect to Fusion?

6 A. Well, again, I think I've said this  
7 earlier. If I didn't, I want to make it  
8 really clear.

9 There were a lot of prescriptions  
10 that were sent to -- that were sent by Fusion  
11 Pharmacy through ESI, and ultimately paid for  
12 by New York City Transit Authority.

13 I saw a handful of prescriptions  
14 that were requested and a handful of copies of  
15 delivery manifests.

16 I think a more thorough  
17 investigation would have been to have looked  
18 at many more, many more.

19 I -- I don't really see the results  
20 of a lot of the investigation that Rutkowski  
21 did. So I'm -- I'm working from memory here.  
22 I'm working from what I remember seeing in the  
23 documentation, again, a handful, I'm going to  
24 say 20 or 30, compared to the -- you know,  
25 let's look back at Aon's report.

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1                   How many -- how many prescriptions  
2   did Fusion, you know, send through?

3                   Quite more than a handful.

4                   I'm saying a more thorough -- you  
5   know, with \$29 million' worth, a more thorough  
6   investigation should have been done other than  
7   a handful of prescriptions.

8           Q.   And so -- (communications  
9   breakup/inaudible) -- understanding --  
10   (communciations breakup/inaudible) -- and if I  
11   understand you, Express Scripts should have  
12   looked at more claims -- or asked for, you  
13   know, verification for more prescription drug  
14   claims other than a handful.

15                   Is that accurate?

16           A.   That is accurate.

17           Q.   And is there a -- a number that you  
18   believe Express Scripts should have asked for  
19   in terms of the number of claims that it  
20   should have looked at?

21           A.   Again, you know, \$29 million went  
22   to Fusion Pharmacy, based on the Aon report  
23   here, and I'm sure that was not a handful of  
24   prescriptions, something more than a dozen or  
25   so prescriptions.

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1 personal body guard or something to that  
2 effect, where it's just one person, you know,  
3 a personal assistant, a -- you know, that --  
4 that's protecting, you know, an individual  
5 in -- in their affairs.

6 So that's -- that's what I see this  
7 as.

8 And Illinois has a similar statute,  
9 and obviously I've passed the exam in Illinois  
10 and that's what we interpret that as to be.

11 So that's not someone doing routine  
12 investigations, you know, of other businesses.  
13 That's someone that is just involved in the  
14 affairs of that employer and there's an  
15 employer-employee relationship.

16 Q. Are you aware of any PBMs that have  
17 licensed investigators in its Fraud, Waste &  
18 Abuse Department?

19 A. I can't tell you as I sit here. I  
20 have no idea. I have not looked at every  
21 single PBM.

22 I -- I'm -- I'm sure that  
23 somewhere, somehow, some PBM has a private  
24 investigator.

25 I know that ex-law-enforcement do

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1 go into this work after they retire from, you  
2 know, law enforcement duties.

3 Q. Okay.

4 But sitting here today, you can't  
5 tell me a PBM that has licensed private  
6 investigators.

7 A. I also can't tell you one that  
8 does -- or doesn't, no. I can't tell you one  
9 way or the other.

10 It was outside the scope of my  
11 review, to look at, you know -- like I said,  
12 I -- I mean, I do, just as a -- as a -- I do  
13 know someone that worked for the government  
14 for, you know, 20 years and then retired and  
15 now works at a PBM, and they do have a  
16 licensure.

17 So I -- you know, that's just  
18 anecdotally. I don't know if that is the  
19 practice of that particular PBM or not, but...

20 Q. What PBM --

21 (Simultaneous speaking.)

22 A. And that doesn't make it right,  
23 either that. Doesn't make it right if PBMs  
24 don't hire licensed professionals. It doesn't  
25 make it right.

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1           You know -- you know, didn't your  
2   mother say, you know, growing up that, "If" --  
3   "If all the rest of the kids do it, doesn't  
4   mean you can do it"?

5           So that's, kind of, the application  
6   here, you know. Just because other PBMs don't  
7   see fit to abide by the law doesn't mean, yes,  
8   I shouldn't.

9           MS. HELLMANN: Beth, can we pull up  
10   the next exhibit, please.

11          MS. BOZICEVIC: Just one --  
12   (communications breakup/inaudible) --  
13   now.

14          MS. HELLMANN: Sure.  
15   (Exhibit No. 124 Marked.)  
16   (Pause.)

17          MS. BOZICEVIC: All right.

18          ESI Exhibit 124 has been added to  
19   the chat.

20          Q. (BY MS. HELLMANN) Let me know when  
21   you have that open, ma'am.

22          A. Okay.

23                I have it open and I'm now looking  
24   at it.

25          Q. And, Ms. Hayes, this was -- this

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1 patients could have been treated with  
2 manufactured products that were a fraction of  
3 the cost, and that is the question ESI should  
4 have been asking.

5 Q. You talked earlier about the number  
6 of claims that Express Scripts looked at with  
7 respect to Fusion.

8 I think you were critical that  
9 Express Scripts didn't look at enough claims.  
10 True?

11 A. True.

12 MS. HELLMANN: Beth, can we put up  
13 the next -- whatever the next exhibit  
14 is?

15 (Exhibit No. 125 Marked.)

16 MS. BOZICEVIC: The document that  
17 we've marked as ESI Exhibit 125 is a  
18 native spreadsheet, and the Bates Number  
19 for that native spreadsheet is  
20 ESI 241790.

21 Q. (BY MS. HELLMANN) Ms. Hayes, I  
22 will tell you that I also do not see this  
23 document on the list of documents you  
24 reviewed.

25 Is it something that's familiar to

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1     you?

2             A.     No.

3             Q.     Do you have any idea what this  
4     document represents?

5             A.     No.

6             Q.     Do you know if it's the number of  
7     audits that Express Scripts did of various  
8     pharmacies, including Fusion?

9             A.     No, I don't know.

10            MS. HELLMANN:   Beth, could you put  
11     up the next exhibit?

12            Q.     (BY MS. HELLMANN)   While she's  
13     doing that, Ms. Hayes, would knowing the  
14     number and extent of other audits Express  
15     Scripts conducted of Fusion -- Fusion Pharmacy  
16     been relevant in forming your opinion?

17            A.     Well, it certainly would have been  
18     relevant, but I would have wanted to make sure  
19     that the audit was -- you know, I didn't  
20     independently audit these.

21                    So I don't know if I would have  
22     agreed -- you know, I saw, "Claim okay,"  
23     "Claim okay," "Claim okay."

24                    I don't know if I would have come  
25     to that conclusion.   So -- but...

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1 Okay. Now, I have the second Excel  
2 sheet in front of me.

3 MS. HELLMANN: Beth, can you read  
4 that one into the record, please.

5 MS. BOZICEVIC: Sure. This is ESI  
6 Exhibit 126.

7 (Exhibit No. 126 Marked.)

8 MS. BOZICEVIC: And I do not have  
9 the Bates Number in front of me,  
10 unfortunately.

11 Q. (BY MS. HELLMANN) Let me ask you  
12 this, Ms. Hayes: Is this document familiar to  
13 you?

14 A. No.

15 Q. This was not a document that was  
16 sent to you?

17 A. It doesn't look familiar to me. I  
18 don't think I used it. I don't think it's in  
19 my list of documents that I used, so, no.

20 Q. That is correct. It is not.

21 Do you know what this document  
22 represents?

23 A. No.

24 Q. Do you know whether it shows  
25 additional audits that Express Scripts



performed of pharmacies, including Fusion Pharmacy?

A. I would -- I would obviously have to do some analysis on this file to see what this is.

I see in Column B there's a name of a pharmacy. But I would have to, you know, put a filter on it and see if -- how many were done.

I -- no. I don't know. I'm just looking at this document for the first time.

Q. That was information that was not provided to you, correct?

A. I have not seen this document, no.

MR. SHIFRIN: Sarah, can we have the Bates Number when you get a chance?

MS. BOZICEVIC: I'm sorry. It is Express Scripts 241789.

MR. SHIFRIN: Thank you.

Q. (BY MS. HELLMANN) Ms. Hayes, I want to talk a little bit about the third opinion you have in this case.

A. Ma'am, can I -- can I get rid of these -- not get rid of them, but can I close these Excel?

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1 Q. Sure.

2 A. Okay.

3 Okay. Go ahead, please. I'm  
4 sorry.

5 Q. What is spread pricing?

6 A. Spread pricing is when the pharmacy  
7 is reimbursed less than the plan sponsors was  
8 charged and the PBM keeps the difference.

9 Q. And why is the fact that the  
10 contract between Express Scripts and Transit  
11 contains spread pricing relevant to your  
12 opinions in this case?

13 A. Because there was a financial  
14 interest in having claims adjudicated and not  
15 having claims not adjudicated, because a  
16 spread was retained when a claim was  
17 adjudicated, not when a claim was not  
18 adjudicated.

19 Q. And in your opinion you cite a  
20 study that spread pricing accounts for ten  
21 percent of the claim.

22 What study is that?

23 A. The State of Ohio did -- the  
24 Controller's Office in the State of Ohio did a  
25 study where they looked at the managed

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1 than spread pricing.

2 Q. And so if I hear -- if I understand  
3 your opinion, is it that Express Scripts has  
4 no motive or incentive to control fraud, waste  
5 and abuse due to spread pricing?

6 A. That is my opinion, yes.

7 Q. Is that opinion related to Express  
8 Scripts or PBMs in general?

9 A. PBMs whose basis of charging  
10 clients is spread pricing, yes.

11 Q. Would you agree -- and I think you  
12 say this in your report -- that contracts  
13 between a PBM and a client can be -- have  
14 spread pricing or -- I think you call it  
15 pass-through pricing.

16 Is that the other mode of pricing?

17 A. Yes.

18 Q. Then flipping to pass-through  
19 pricing, do you believe that a PBM has motive  
20 or incentive to control fraud, waste and abuse  
21 under a pass-through pricing contract?

22 A. Well, I think there's more  
23 motivation because you're paid a flat fee,  
24 either a per claim or per member fee, and it  
25 doesn't matter, you know, if zero claims go

conveyed in writing to New York City Transit that it was going to monitor the network.

And I'm saying that because of the way -- you know, you've got to ask: Okay. Well, what was ESI's motive if they didn't investigate this \$67 million' worth of compounds?

Well, one of the motives might have been financial.

And when you think about it, spread pricing would give you a motive for not investigating and turning off the spigot of compound prescriptions.

Q. And do you believe that Express Scripts had that motive?

A. I have not interviewed anyone at Express Scripts to understand their motives.

I'm just saying that I'm -- the contract is spread pricing, \$67 million' worth of the compounds got paid, and -- and I'm saying: Where is the disconnect here?

As I say very clearly in my report, ESI had financial incentives to process excessive compound prescriptions.

I didn't say that that was their

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1 close this.

2 You believe that Express Scripts  
3 had a duty and responsibility to ensure that  
4 claims were covered, correct?

5 A. Yes.

6 Q. You haven't seen evidence whether  
7 Express Scripts complied with this duty or  
8 didn't comply with this duty.

9 MR. SHIFRIN: Objection --

10 (Simultaneous speaking.)

11 THE WITNESS: I --

12 MR. SHIFRIN: -- form.

13 THE WITNESS: Go ahead,

14 Mr. Shifrin.

15 MR. SHIFRIN: Object to form.

16 THE WITNESS: Sorry to interrupt.

17 MR. SHIFRIN: Go ahead.

18 THE WITNESS: What I see here is  
19 they covered drugs that are potentially  
20 questionable and I saw no evidence that  
21 they questioned them. That is the --  
22 that is my testimony.

23 MS. HELLMANN: Okay. I understand.

24 Q. (BY MS. HELLMANN) With respect to  
25 the opinion about the -- the red flags you

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1 believe that Express Scripts should have  
2 noticed in the data and communicated to  
3 Transit, are you aware of -- or do you know of  
4 any articles, studies, regarding when a PBM  
5 tells a client about red flags and data?

6 A. You know, maybe this is something  
7 that I should undertake post-this-situation,  
8 is to write a book about it.

9 I have not seen a book on how PBMs  
10 should manage prescription drugs for their  
11 clients, no. I've not seen that book.

12 But what I have seen in 25 years of  
13 going to quarterly meetings every quarter in  
14 25 years -- so if we do the multiplication,  
15 that's like a hundred meetings -- what I've  
16 seen in the hundred situations is that PBMs  
17 will go through major areas of concern -- and,  
18 gee, a million dollars in compound drugs is an  
19 area of concern -- and review that with their  
20 clients and try and come up with ways to  
21 better manage that level of spend.

22 Q. Ms. Hayes, do you know if New York  
23 City Transit covered lidocaine?

24 A. Well, clearly they must have,  
25 because they paid for it.

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